

### REMARKS

The examiner rejected claims 1, 4, 5, 7-12, and 14-33 under 35 U.S.C. § 103(a) as unpatentable over 63 F.R. 12124 ("NASD")<sup>1</sup> alone.

Claim 1, as amended, recites "...[a] request for cancel is configured to allow a market participant to request cancellation of an order *of any size* before the order is executed."

[*Emphasis* added]

The examiner contends:

**[T]he NASD reference discloses a system for receiving a request to cancel execution of an order from a market participant (p. 11 par. 1, recipient permitted to decline an order, i.e., cancel an order). Also, it is well-known to place orders that are "good until cancelled", which suggests that the system provides some means for participants to cancel orders.**

NASD states, however:

**Depending on the time sequence of the directed order, the order will be delivered to the particular MMID identified by the order entry firm when the order's turn for delivery arrives. Once delivered to that MMID, the directed order will be handled for execution purposes as described below in the non-directed order context. That is, if the order is 1,000 shares or less and the market maker or ECN quotation is equal to or greater than the size of the order, the System will automatically execute the order and decrease the displayed quote size by the amount executed. If the order is larger than 1,000 shares but less than 5,000 shares, the order will be delivered to the market maker or ECN for action for a period of 17 seconds. If the order is 5,000 shares or greater, it will be delivered to the market maker or ECN for action for a period of 32 seconds. If the recipient of the order has done nothing at the end of the applicable period, the System will execute the order up to the displayed quote size of the recipient. *During the delivery period*, the recipient is permitted to accept, partially execute, or decline the order.<sup>2</sup>**

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<sup>1</sup> NASD Rulemaking: Relating to an Integrated Order Delivery and Execution System, *Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Integrated Order Delivery and Execution System*, SECURITIES AND EXCHANGE COMMISSION, Release No. 34-39718, File No. SR-NASD-98-17, March 4, 1998

<sup>2</sup> NASD, Page 12129, Column 3 – Page 12130, Column 1, *emphasis* added

The examiner equates a decline of an order during a delivery period in NASD with a request for cancel as recited in claim 1. Note, however, that not all orders have a delivery period in NASD. For example, as stated in the passage *supra*, if the order in NASD has less than 1,000 shares, then the order is executed automatically. Thus, for example, an ECN would not be able to request a cancel for an order of less than 1,000 shares in the proposed collector facility of NASD, because, as such an order is executed automatically, there being no delivery period.

Such a difference is not a matter of a mere design choice that would render claim 1 obvious in view of NASD. As stated in the Specification:

**ECNs do not currently participate in the SOES™ execution system because of the potential for dual liability...An ECN cannot decline a SOES™ execution because the system delivers an execution, as opposed to an order.<sup>3</sup>**

**The request to cancel feature...will benefit ECNs by allowing them to participate in automatic execution while minimizing the potential for double liability...<sup>4</sup>**

That is, the advantage introduced to the market by the feature recited in amended claim 1 is that a market participant such as an ECN will be able to take advantage of systems that execute orders automatically with a minimized risk of double liability.

The request for cancel feature, as recited in independent claim 1 as well as independent claims 14, 20, and 21, allows for minimization of risk of double liability. For at least these reasons, independent claims 1, 14, 20, and 21 are patentable over NASD. Similarly, dependent claims 4, 5, 7-12, 15-19, and 22-33 each depend from respective ones of these independent claims and are likewise patentable over this reference.

It is believed that all the rejections and/or objections raised by the examiner have been addressed.

In view of the foregoing remarks, applicant respectfully submits that the application is in condition for allowance and such action is respectfully requested at the examiner's earliest convenience.

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<sup>3</sup> Specification, Page 9, Lines 19-30

<sup>4</sup> Id., Page 10, Line 29 – Page 11, Line 1

All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

The fees in the amount of \$130 for the Petition for Extension of Time are being paid concurrently on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to deposit account 06 1050, referencing 09857-0029001.

Respectfully submitted,

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